IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 5TH SEPTEMBER 2007 / 14TH BHADRA 1929

WP(C).No. 20043 of 2007(J)

OS.623/2006 of PRL.SUB COURT,TRIVANDRUM
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PETITIONER:

M.VELAMMAL, TC NO.25/3441,
VALLIVILA BUNGLOW, PUTHENCHANTHAI,
VANCHIYOOR VILLAGE, THIRUVANANTHAPURAM.

BY ADV. SRI.G.S.REGHUNATH

RESPONDENTS:

A.S.KOMALAM, TC 39/1863,
ROHINI, MANACAUD, THIRUVANANTHAPURAM.

BY ADV. SRI.RAM MOHAN.G.
SRI.G.P.SHINOD
SRI.MANU V.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONERS EXHIBITS:

EXT.P1: COPY OF THE PLAINT IN O.S.No.623 OF 2006 ON THE FILE OF THE SUB COURT, TRIVANDRUM.

EXT.P2: COPY OF THE PEITITION FOR INJUNCTION AND SUPPORTING AFFIDAVIT IN O.S.NO.623 OF 2006 ON THE FILE OF THE SUB COURT, TRIVANDRUM.

EXT.P3: COPY OF THE ORDER DATED 12/12/2006 IN IA 6294/2006 IN O.S.NO.623 OF 2006 ON THE FILE OF THE SUB COURT, TRIVANDRUM.

EXT.P4: COPY OF THE COUNTER AFFIDAVIT FILED BY PEITITONER IN IA.6294/2006 IN O.S.No.623 OF 2006 ON THE FILE OF SUB COURT, TRIVANDRUM.

EXT.P5: COPY OF THE WRITTEN STATEMENT FILED BY THIS RESPONDENT ON 9/1/2007 IN O.S.NO.623 OF 2006 ON THE FILE OF THE SUB COURT, TRIVANDRUM.

EXT.P6: COPY OF THE ORDER DATED 3/04/2007 IN IA 6294/2006 IN O.S.NO.623 OF 2006 ON THE FILE OF THE SUB COURT, TRIVANDRUM.

EXT.P7: COPY OF THE REPORT FILED BY ADVOCATE V. SURESHKUMAR IN O.S.623 OF 2006 ON THE FILE OF THE SUB COURT, TRIVANDRUM.

EXT.P8: COPY OF THE ORDER DATED 13/4/2007 IN O.S. 623 OF 2006 ON THE FILE OF THE SUB COURT, TRIVANDRUM.

EXT.P9: COPY OF THE AGREEMENT DATED 13.7.2005

RESPONDENTS EXHIBITS:

EXT.R1: COPY OF THE I.A.2322/2007 FILED BY THE PLAINTIFF IN O.S.623 OF 2006

TRUE COPY

P.A.TO JUDGE

M.N.KRISHNAN,J

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W.P.(C).No.20043 of 2007

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Dated this the 5th day of September, 2007

JUDGMENT

This writ petition is preferred against the order of the Subordinate Judge, Thiruvananthapuram, and to set aside Ext.P8 order. At the outset I may state this is a classical case where the Subordinate Judge has exceeded his jurisdiction and passed orders as if he was exercising the jurisdiction under Article 226 or 227 of the Constitution of India. In a suit for simple specific performance where the plaintiff have moved for an injunction the court should have considered the matter regarding the prima facie case the balance of convinces and irreparable injury and passed an order either granting or refusing injunction. Instead of doing it the learned Subordinate Judge have gone to extend of passing a decree in the suit for specific performance and directing the parties to appear before the Sub Registry and to appoint a Commissioner to find out whether the parties are present person or other. These are all matters which the learned Subordinate Judge should not have considered especially when it

was not a matter of a consensus between the parties. Therefore, without going into the merits of the case I set aside Exts.P6 and P8 orders and all the directions contained therein and direct the Subordinate Judge to consider the matter afresh. The learned Subordinate Judge is directed to consider the injunction application afresh untrammeled by any of his observations contained in the Exts.P6 or P8 order and dispose of the matter after hearing both sides. I make it clear that till a decision is taken on the matter the defendant is restrained by an injunction from alienating property. The learned Subordinate Judge shall see the matter is disposed of as early as possible, at any rate, within a period of one month from today. One of the parties is directed to take a copy of the order and produce before the concerned Sub Judge for proper compliance.

M.N.KRISHNAN,JUDGE

dvs